

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
PI Telecom Infrastructure, LLC and)	New Tower File No. 0006907145
Metropolitan Transportation Authority)	
)	
Proposed Monopole Tower in)	
Tarrytown, New York)	
)	

ORDER

Adopted: March 9, 2018

Released: March 9, 2018

By the Deputy Chief, Competition and Infrastructure Policy Division:

1. PI Telecom Infrastructure LLC (Parallel), acting on behalf of the New York Metropolitan Transit Authority (MTA), proposes to build a communications tower in Tarrytown, New York, for the provision of public safety communications services.¹ Two parties – the Village of Tarrytown (Village) and a resident of the village, Leonard Cardillo – raised concerns about the proposed tower’s potential visual effects on nearby historic properties and the surrounding landscape. As discussed below, we find that the issues raised by these parties do not provide a sufficient basis for us to reopen the historic preservation review process, which, by the terms of the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process (*Wireless Facilities NPA*), is now complete.² Moreover, based on a *sua sponte* review, we find that the potential environmental impact of the proposed tower is negligible, and accordingly, pursuant to Section 1.1307(d) of the Commission’s rules, we decline to require Parallel and MTA to submit an Environmental Assessment (EA).³ Thus, Parallel and MTA may proceed with construction and operation of the proposed tower.

¹ Parallel was acquired in May 2017 by Lendlease, an international property and infrastructure corporate group with headquarters in Sydney, Australia. See Bloomberg Markets, Company Overview of Parallel Infrastructure LLC (<https://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapid=537951224>, reviewed Mar. 8, 2018). We continue to refer to the company as Parallel in this order. MTA, a New York State agency, operates the Metro-North Railroad, as well as the New York City subway and bus systems, the Long Island Rail Road, the Staten Island Railway, and seven bridges and two tunnels in New York City. See MTA, The MTA Network: Public Transportation for the New York Region (<http://web.mta.info/mta/network.htm>, reviewed Mar. 8, 2018).

² See Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process (*Wireless Facilities NPA*), 47 C.F.R. Part 1, App. C. As discussed below, the New York State Division for Historic Preservation (NYSHPO) concurred in writing with Parallel’s analysis finding that the proposed tower will not have any adverse effect on historic properties within the relevant Area of Potential Effects (APE). See *id.*, § VII.C.1.

³ 47 C.F.R. § 1.1307(d) (“If the Bureau responsible for processing a particular action, otherwise categorically excluded, determines that the proposal may have a significant environmental impact, the Bureau, on its own motion, shall require the applicant to submit an EA.”); see also *id.* §§ 1.1308(d), 1.1312(b).

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I. BACKGROUND AND PROCEDURAL HISTORY

2. Parallel, on behalf of MTA, proposes to build a 180-foot structure, consisting of a 150-foot monopole tower with a lightning rod and whip antenna on top, on a site owned by MTA adjacent to an electric substation on the east side of the Metro-North Railroad (MNR) station in Tarrytown. MTA plans to use the structure as part of its Police Department's Metropolitan Regional Radio System (MRRS), an interoperable public safety communications system designed to provide the necessary coverage for uninterrupted service across all MTA rail stations, facilities, and roadways in the greater New York City metropolitan area. According to MTA, the MRRS facilities, including the proposed Tarrytown monopole, will improve access to emergency services (including E911) and will enable the MTA Police to offer interoperable communications to the New York State Police and other federal, state, county, and municipal public safety and first responder agencies, which MTA asserts will be particularly critical during emergency operations and natural disasters.⁴

3. On July 24, 2015, Parallel published a notice in the classified section of a local newspaper inviting public comments on the proposed tower's potential effects on historic properties.⁵ On August 6, 2015, Parallel sent letters to the Village's planning and zoning offices, as well as the local Historical Society, requesting their comments on the proposed tower.⁶ Parallel submitted its Section 106 information packet (FCC Form 620) to the New York State Historic Preservation Office (NYSHPO) on August 10, 2015, requesting the NYSHPO's concurrence with findings that the proposed tower would have no effect on several historic properties within one-half mile of the proposed tower site.⁷ Parallel identified a number of historic properties it had taken into consideration, but did not include the depot building at the Metro-North Tarrytown station (Tarrytown Station) in its discussion.⁸ The NYSHPO issued a written concurrence with Parallel's proposed finding eleven days later, on August 21, 2015.⁹

4. On September 4, 2015, the Village sent Parallel a letter listing historic properties in the Village – including the Tarrytown Station – that are within one-half mile of the proposed monopole site and from which the proposed monopole would be visible, but did not comment positively or negatively on the effects the proposed tower would have on any of the properties it identified.¹⁰ On September 8, Mr. Cardillo sent an email to Parallel's consultant expressing concern about the proposed tower, in part

⁴ Letter from Michael R. Coan, Chief, Police Department, Metropolitan Transportation Authority, to Michael Blau, Administrator, Village of Tarrytown, NY (Oct. 7, 2015).

⁵ Parallel Consolidated Response at 2-3.

⁶ *Id.*

⁷ *Id.* at 4.

⁸ *Id.* at 16-17. The Tarrytown railroad station has been recognized as “architecturally and historically significant as a representative example of a late nineteenth century railroad station (1890). Designed by the Boston architectural firm of Shepley, Rutan and Collidge, the masonry building features numerous elements associated with this property type, including its low profile, single story form, broad projecting eaves with knee bracing, wood panel doors, canopy and freight platform. The design is further enhanced by the introduction of polygonally shaped end walls. . . . The building appears to retain a significant amount of architectural integrity on both its exterior and interior spaces. The Tarrytown Station is an important example of its type and remains a significant reminder of the development of this important regional transportation system.” New York State Historic Preservation Office, Historic Resource Evaluation for MNR Station at 1-2 (Oct. 14, 2015) (Exh. P to Parallel Consolidated Response).

⁹ Parallel Consolidated Response at 4; *see* Letter from John A. Bonafide, New York State Historic Preservation Officer, New York State Div. of Parks, Recreation, and Historic Preservation, to Laura L. Mancuso, Director, Cultural Resources, CBRE, Inc./Telecom Advisory Services (Aug. 25, 2017) (NYSHPO 8/25/17 letter) (referring to concurrence from Aug. 21, 2015).

¹⁰ *See* Letter from Michael Blau, Administrator, Village of Tarrytown, to Andrew Maziarski, IVI International, Inc. (Sept. 4, 2015) (Exh. B to Parallel Consolidated Response) at 1-2.

on the basis of preliminary analysis by Village historians indicating several historic properties “that would be impacted by the tower,” and further stating that “the tower would surely dominate the viewscape and be an eyesore for scenic and historic Hudson River districts, and would possibly violate sections of the National [Historic] Preservation Act.”¹¹ Both the Village’s letter and Mr. Cardillo’s email were forwarded to the Commission’s Wireless Telecommunications Bureau (Bureau) staff, which subsequently directed Parallel to respond to both submissions by October 28, 2015.¹²

5. Parallel submitted its Consolidated Response on October 27, 2015. Parallel identified 18 historic properties within the one-half mile area of potential effects (APE) of the proposed tower site, asserted that none of them “has visual setting or visual elements as a character-defining feature of National Register eligibility,” and contended, on that basis, that “none of these Historic Properties will be impacted or adversely effected [*sic*] by the proposed tower.”¹³ Parallel included the Tarrytown Station in its discussion and acknowledged that its submission to the NYSHPO had omitted that historic property.¹⁴

6. The Village and Mr. Cardillo filed responses to Parallel’s Consolidated Response on November 6 and 7, respectively. Both the Village and Mr. Cardillo asserted that the proposed tower would be visible from numerous historic properties within the APE, but neither of them focused on the Tarrytown Station in particular.¹⁵ Both the Village and Mr. Cardillo contended that the visual impact of the proposed tower would inevitably have an adverse effect on the “historic sites” from which it would be visible.¹⁶ Mr. Cardillo also submitted copies of over 20 identical form letters signed by Tarrytown residents expressing opposition to the proposed tower, in part on grounds that it would “negatively impact the value we residents place on views of the Hudson, most significantly views from Historic Sites close to the proposed tower.”¹⁷

¹¹ Email from Len Cardillo to Andrew Maziarski, IVI Telecom Services (Sept. 8, 2015) (Exh. C to Parallel Consolidated Response) (Cardillo 9/8/15 email).

¹² Email from Donald Johnson, Competition & Infrastructure Policy Div., Wireless Telecomm. Bureau, FCC, to Anthony Lehy, *et al.* (Exh. E to Parallel Consolidated Response).

¹³ Parallel Consolidated Response at 9.

¹⁴ *Id.* at 16. Parallel asserted that it had failed to identify the Tarrytown Station in its initial review “due to a glitch” in the NYSHPO’s historic properties system database. *Id.*

¹⁵ Letter from Michael S. Blau, Village Administrator, Village of Tarrytown, to Marlene H. Dortch, Secretary, FCC (Nov. 6, 2015) (Village Reply) at 1-2; Email from Len Cardillo to Donald Johnson, FCC, *et al.* (Nov. 7, 2015) (Cardillo Reply) at 6 (asserting “claim of adverse visual impact by the Monopole Tower” affecting numerous historic sites in Tarrytown); *see generally id.* at 3-7 & Exhs. A-B. The Village asserted that Parallel’s statement that the proposed tower would not be visible from the Washington Irving Middle School was erroneous, as evidenced by photographic simulations that MTA had provided to the Village, as well as by simulations that the Village itself had commissioned based on photos taken from a drone aircraft. Village Reply at 2 & Exh. A at 9, Exh. B at 5, 7; *see* Parallel Consolidated Response at 15.

¹⁶ *See* Village Reply at 2-3 (“It is the belief of the Village that sites may be designated for historic and cultural reasons; however, the site cannot be viewed in a vacuum. When a designated site is viewed, it is viewed in its entirety, which includes what is visible from the site. Thus, if a 180- foot monopole is visible from a designated site, the visibility of the monopole will impact upon the appreciation of the site by the people who are viewing the site. As such, it is the opinion of the Village of Tarrytown that the monopole will have an adverse impact on the designated historic sites within the one-half mile APE.”); Cardillo Reply at 2, 6 (arguing that “features of an Historic Site not recognized at the time of nomination to the National Historic Register or recognized subsequent to nomination” and “the immediate view of the Hudson River from the Historical Sites noted in Exhibit A must be considered in assessment of effect.”).

¹⁷ Cardillo Reply at 7-8 & Exh. F at 5-7, Exh. G at 1-27. The form letters also indicated concern for non-specific “environmental issues related to cell towers” and noted the proposed tower’s proximity to “village ball fields and playing fields used by our children.” Mr. Cardillo further contended that the proposed tower would affect views up-

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7. On July 10, 2017, the Bureau staff sent an email to MTA, Parallel, and the other parties, stating that it is undisputed that the Tarrytown Station qualifies as a historic property within the half-mile APE of the site, and that Parallel had not assessed the potential effects of the proposed tower on that property in its August 10, 2015 submission to the NYSHPO.¹⁸ The email further stated:

The staff... encourage MTA and/or Parallel to submit to the [NYSHPO] a new Form 620 and accompanying information packet with a complete assessment of the proposed tower's potential for direct and visual effects on the Tarrytown Metro-North Railroad Station. . . . Commission precedent establishes that an applicant's failure to identify or assess a historic property in its Form 620 submission to a SHPO may be considered a "material omission," . . . and makes clear that a new or revised submission may be necessary to give the SHPO and consulting parties a full opportunity to understand and evaluate the effects of the proposed tower on the omitted historic property. That submission, however, would not compromise the finality of the SHPO's findings regarding effects on historic properties that the applicant properly identified and assessed in its original submission.¹⁹

8. On July 19, 2017, Parallel submitted what it characterized as an "update" to its Form 620 information packet, including an assessment of the proposed tower's potential for direct and visual effects on the Tarrytown Station and a proposed finding of no adverse effect.²⁰ On August 25, 2017, the NYSHPO responded with a letter stating, "Based on our review of the additional material, our concurrence from August 21, 2015 remains unchanged."²¹ The letter further "request[ed] that the structure and all appurtenances be painted to minimize any potential visual impacts."²² In response, applicants' counsel sent an email to the Bureau staff, stating, "The MTA and Parallel confirm that they will honor that request, and will paint the structure and all appurtenances."²³

II. DISCUSSION

9. Pursuant to Section XI of the *Wireless Facilities NPA*, the Commission has authority to reopen the historic preservation review process "where there has been a material error or omission in the information submitted by the applicant[,], even if the error or omission comes to light after the SHPO has concurred with an applicant's finding of no adverse effect."²⁴ In this case, the review process was completed when the NYSHPO concurred in writing with the conclusion in Parallel's second submission that the proposed tower would have no adverse effect on historic properties within the APE.²⁵ Nothing in

river for at least five months of the year and would "be an eyesore for scenic and historic Hudson river districts." Cardillo Reply at 3; Cardillo 9/8/15 email.

¹⁸ Email from David Sieradzki, Competition & Infrastructure Policy Div., Wireless Telecomm. Bureau, FCC, to Maurice Chapman, MTA, *et al.* (July 10, 2017).

¹⁹ *Id.* (citing *Wireless Properties LLC (Proposed Tower, Missionary Ridge, Chattanooga, Tennessee)*, 30 FCC Rcd 7707, 7717, 7721-22, paras. 23-24 & n.63, 30 (2015)).

²⁰ Letter from Laura L. Mancuso, Director, Cultural Resources, CBRE, Inc./Telecom Advisory Services, to John A. Bonafide, New York State Historic Preservation Officer, New York State Div. of Parks, Recreation, and Historic Preservation (July 19, 2017).

²¹ NYSHPO 8/25/17 letter at 1.

²² *Id.*

²³ Email from Christine Crowe, Wilkinson Barker Knauer, counsel for Parallel, to Theodore Marcus, *et al.*, Competition & Infrastructure Policy Div., Wireless Telecomm. Bureau, FCC (Dec. 1, 2017).

²⁴ *Wireless Properties (Missionary Ridge)*, 30 FCC Rcd at 7713, para. 17 (2015); *AT&T Mobile Services, Inc. (Construction of Tower, Fort Ransom, North Dakota)*, 30 FCC Rcd 11023, 11026, para. 9 (WTB 2015); *Wireless Facilities NPA*, § XI.

²⁵ *Wireless Facilities NPA*, § VII.B.1.

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the Village's or Mr. Cardillo's filings identifies any other material errors or omissions that warrant further action.

10. The failure of Parallel's initial Form 620 information packet to consider the Tarrytown Station was a "material" omission because it precluded the NYSHPO from effectively assessing the effects (if any) of the proposed tower on all historic properties within the half-mile APE and thus vitiated the NYSHPO's concurrence with respect to the undertaking as a whole.²⁶ That omission, however, did not preclude the NYSHPO from assessing the effects of the proposed tower on the historic properties *other than* the Tarrytown Station that were listed in Parallel's initial filing. Parallel remedied the material omission in its initial filing by submitting a new Form 620 information packet that included an evaluation of the proposed tower's impact on the Tarrytown Station and an analysis justifying its proposed finding of no adverse effect on historic properties in the APE. The NYSHPO's concurrence renders the historic preservation review process complete pursuant to the *Wireless Facilities NPA*.²⁷

11. We are not aware of any other material errors or omissions that would negate the effectiveness of the NYSHPO's review. Nor is there any evidence of misconduct by the MTA or Parallel. While the applicants cannot rely on the purported "glitch" in the NYSHPO's database to excuse the omission of the Tarrytown Station,²⁸ it does not appear that the omission involved any willful misconduct. Similarly, even if, as the Village contends, Parallel's statement regarding the visibility of the tower from the Washington Irving Middle School (WIMS) was erroneous,²⁹ that error was harmless. Parallel explained that "even if the tower would be visible from WIMS, there would be no impact on WIMS because the proposed tower would not have an effect on the characteristics qualifying WIMS for inclusion in the National Register."³⁰ Contrary to the assertions of the Village and Mr. Cardillo, the fact that a proposed undertaking is visible from a historic property, standing alone, does not necessarily mean that the undertaking would have adverse effects on the historic property. The inquiry is whether the proposed undertaking has "the potential to introduce visual elements that diminish or alter the setting, including the landscape, where the setting is a character-defining feature of a Historic Property that makes it eligible for listing on the National Register."³¹ We have no reason to doubt the NYSHPO's conclusion that the proposed tower has no such potential.

12. The National Environmental Policy Act (NEPA) and its implementing regulations require federal agencies to identify and consider environmental impacts, including aesthetic effects, when deciding whether to authorize or undertake a major federal action.³² The Commission has long recognized that, in some circumstances, the "visual impact" of a proposed tower can be a "principal factor of environmental significance, . . . depend[ing] on [the tower's] physical characteristics and its location."³³ Thus, although Section 1.1307(a) and (b) of the Commission's rules do not list aesthetic

²⁶ See *Wireless Properties (Missionary Ridge)*, 30 FCC Rcd at 7715, 7720-21, paras. 20, 30; *AT&T Mobile Services (Fort Ransom)*, 30 FCC Rcd at 11026, para. 9.

²⁷ See *Wireless Facilities NPA*, § VII.B.1.

²⁸ See *Wireless Properties (Missionary Ridge)*, 30 FCC Rcd at 7720, para. 30 ("Wireless Properties cannot rely on the failure of a map provided by the Tennessee SHPO to identify the Bragg Reservation . . . to excuse its omission.")

²⁹ See Parallel Consolidated Response at 15; Village Reply at 2 & Exh. B at 5, 7.

³⁰ Parallel Consolidated Response at 15.

³¹ *Wireless Facilities NPA*, § VI.C.3

³² See 42 U.S.C. § 4331(b) ("it is the continuing responsibility of the Federal Government to use all practicable means . . . [to] assure for all Americans safe, healthful, productive and esthetically and culturally pleasing surroundings"); 40 CFR § 1508.8(b) ("effects" include "aesthetic" effects); *Maryland-National Capital Park and Planning Commission v. U.S. Postal Service*, 487 F.2d 1029 (D.C. Cir. 1973) (recognizing federal agencies' obligation to consider aesthetic effects).

³³ *Implementation of the National Environmental Policy Act of 1969*, 49 FCC Rcd 1313, 1324, para. 28 (1974).

concerns or visual impacts as specific concerns that, if present, automatically require an applicant to prepare an Environmental Assessment (EA),³⁴ “the ‘safeguard’ provisions of section 1.1307(c) and (d) of the rules” enable parties (or the Commission, *sua sponte*) to “raise aesthetic (or other) objections to any proposed Commission actions” and authorize the Commission to “decide, on a case-by-case basis, whether environmental processing should be required.”³⁵

13. Here, no party specifically argued that the proposed tower would have a potentially significant impact on the environment warranting further consideration pursuant to NEPA, but Mr. Cardillo did raise generalized concerns about the appearance of the proposed structure and its impact on views of the Hudson River from various sites in Tarrytown. Parallel, the Village, and Mr. Cardillo all submitted photographs showing the environs of the proposed tower and simulating how it would appear from various vantage points. Those photographs reveal that the proposed tower is located in a heavily built-up urban area, adjacent to other industrial facilities. The evidence also appears to demonstrate that the proposed tower, although visible from many parts of the Village, would not substantially diminish the public’s enjoyment or appreciation of the Hudson River or the recently rebuilt Tappan Zee Bridge (renamed as the Governor Mario M. Cuomo Bridge). In this context, we find that the proposed tower would have no significant detrimental effect on the character or perceived beauty of the overall viewscape. We thus conclude that the visual effects of the proposed tower will not have a potentially significant environmental effect that would warrant our requiring the submission of an EA pursuant to Section 1.1307(d).

III. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.1307 of the Commission’s rules, 47 C.F.R. § 1.1307, that there is no basis for reopening the historic preservation review process under Section 106 of the National Historic Preservation Act, 54 U.S.C. § 306108, and that there is no need for further environmental processing pursuant to Section 102(C) of the National Environmental Policy Act, 42 U.S.C. § 4332(C).

15. The Wireless Telecommunications Bureau issues this order pursuant to delegated authority under Sections 0.131 and 0.331 of the Commission’s rules, 47 C.F.R. §§ 0.131 and 0.331.

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³⁴ 47 CFR § 1.1307(a), (b).

³⁵ *Amendment of Environmental Rules in Response to New Regulations Issued by the Council on Environmental Quality*, 60 Rad. Reg. 2d (P&F) 13, 1986 WL 292182 (1986); 47 CFR § 1.1307(c), (d). See *AT&T Mobile (Fort Ransom)*, 30 FCC Rcd at 11032, para. 28; *SBA Towers III, LLC (Petitions to Deny and Requests for Environmental Review Against Antenna Structure Registration with Environmental Assessment, Copper Harbor, Michigan)*, 31 FCC Rcd 1755, 1765-66, para. 38 (WTB 2016); *Canyon Area Residents for the Environment*, 14 FCC Rcd 8152, 8159-60, para. 26 (1999).